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JUN 29 2005

OFFICE OF PETITIONS

In re Application of :
Subutai Ahmad et al : DECISION ON PETITION
Application No. 09/371,462 : UNDER 37 CFR 1.137(b)
Filed: August 1, 1999 :
Attorney Docket No. ELECP014 :
:

This is a decision on the petition under 37 CFR 1.137(b), filed February 14, 2005, to revive the above-identified application.

The petition is granted.

The petition satisfies the requirements for a grantable petition in that the reply in the form of a request for continued examination, fee of \$790, and submission pursuant to the provisions of 37 CFR 1.114; the petition fee of \$1,500; and the required statement of unintentional delay have been submitted. Accordingly, the reply to the final Office action of May 10, 2004 is accepted as having been unintentionally delayed.

Despite the fact that this application became abandoned for failure to timely reply to the final Office action of May 10, 2004, and prior to the granting of the petition to revive, a new non-final Office action was mailed in this case on April 6, 2005.¹ The Examiner had no procedural authority with respect to this abandoned application. See Lorenz v. Finkl, 333 F.2d 885, 891, 142 USPQ 26, 30 (CCPA 1964). Therefore, the examiner was without authority to act further in the case absent a grantable petition reviving the application. Nevertheless, in view of this decision on petition, the subsequent action taken by the examiner, i.e., the mailing of a new non-final Office action, has been ratified. In view thereof, it is unnecessary to either vacate or remail the Office action of April 6, 2005.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 3621 to await a reply to the non-final Office action mailed April 6, 2005. Failure to timely reply will again result in the abandonment of the application.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions

¹ While Office computer database records indicate that a petition to revive was granted on April 4, 2005, this is an erroneous entry by USPTO personnel, since no decision on the petition had in fact been rendered on that date.